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Jitender Singh a/l Pagar Singh & Ors v Pentabdir Tanah Wilayah Persekutuan

B HIGH COURT (KUALA LUMPUR) — LAND REFERENCE NO S3–15–13 OF 2001
MOHD HISHAMUDIN J
3 JANUARY 2008

C

Constitutional Law — Rights to property — Compulsory acquisition — Landowners' property compulsorily acquired — Assessment of compensation by High Court — Differing but close opinions expressed by sitting assessors — Whether High Court ought to accept opinion in favour of landowners — Whether such acceptance consonant with Federal Constitution art 13

D

Land Law — Acquisition of land — Compensation — Assessment of — Differing opinions of assessors — Whether High Court ought to accept opinion in favour of landowners — Whether such acceptance consonant with Federal Constitution art 13

E

Land Law — Acquisition of land — Reference to court — Costs — Amount claimed by landowners far in excess of compensation awarded by High Court — Whether landowners should be deprived of costs — Whether landowners should be ordered to reimburse part of land administrator's costs

F

Land Law — Acquisition of land — Reference to court — Differing opinions of assessors — Whether judicial discretion of High Court limited — Whether High Court compelled to concur with either one opinion — Whether High Court free to arrive at its own decision — Land Acquisition Act 1960 s 40D(2)

G

H

The applicants' land measuring 165,217.92 square feet was compulsorily acquired under the Land Acquisition Act 1960 ('the Act'). The land administrator assessed compensation on the basis of RM193.61 per square foot, and made an award of RM31,987,351.45. The applicants instead claimed that their land was worth RM650 per square foot. The matter was referred to the court, which had to determine a fair and reasonable amount of compensation. The court was aided by two assessors — Phuah and Basri. Phuah was a government valuer and Basri was a valuer from the private sector.

I

Held:

(1) By virtue of s 40D(2) of the Act, the court's judicial discretion was limited. The court was legally compelled to concur with the opinion of either one of the two assessors, in the event the assessors differed in their opinions. The High Court was not at liberty to arrive at any other decision, even if it disagreed with the opinions of the assessors (see paras 11–12).

(2) In the instant case, both assessors differed in their opinions. Phuah assessed compensation at RM198 per square foot, totaling RM32,713,577.32, whereas Basri had assessed compensation on the basis of RM201.60 per square foot, totaling RM33,307,932.05. However, both opinions were equally sound and respectable. The opinions had applied the correct valuation principle, chosen the ideal comparable, made the appropriate adjustments, and had taken into account similar factors in making the adjustments. Their differences only related to the percentage given for each of the factors (see paras 9–10 & 13).

(3) It was a sound principle that where both valuers had applied the correct principle of valuation, had chosen the same comparable, had considered similar factors for the purpose of adjustment, and arrived at opinions very close to one another — that the court should elect to adopt the valuation in favour of the landowners. This is consonant with the spirit of art 13 of the Federal Constitution. In the circumstances, the court would accept the opinion of Basri which represented the higher value and therefore in favour of the applicants/landowners (see paras 14–15).

(4) On the facts, since the amount claimed by the applicants was far in excess of the amount awarded by the court, by virtue of s 51 of the Act, the applicants should not be entitled to costs. The applicants should also be ordered to pay the land administrator 50% of his costs. The applicants should further be ordered to pay Basri — the private sector valuer — a fee of RM500 per day (see paras 16 & 18).

[Bahasa Malaysia summary

Tanah pemohon yang berkeluasan 165,271.92 kaki persegi telah diperoleh secara wajib di bawah Akta Pemerolehan Tanah 1960 ('Akta tersebut'). Pentadbir tanah telah menaksirkan pampasan atas asas RM193.61 sekaki persegi dan membuat award sebanyak RM31,987,351.45. Pemohon sebaliknya menyatakan bahawa tanah mereka adalah bernilai RM650 sekaki persegi. Perkara tersebut telah dirujuk kepada mahkamah yang mana perlu menentukan satu jumlah pampasan yang adil dan munasabah. Mahkamah

A telah dibantu oleh dua orang penaksir — Phuah dan Basri. Phuah adalah penilai kerajaan dan Basri adalah penilai swasta.

B **Diputuskan**:

(1) Mengikut s 40D(2) Akta tersebut, budi bicara kehakiman mahkamah adalah terhad. Mahkamah adalah terikat dari segi undang-undang untuk bersetuju dengan pandangan salah seorang daripada dua penilai dalam keadaan kedua-dua penilai berbeza pendapat. Mahkamah Tinggi C tidak bebas untuk membuat keputusan lain, walaupun tidak bersetuju dengan pandangan kedua-dua penilai (lihat perenggan 11–12).

(2) Dalam kes ini, kedua-dua penilai berbeza pendapat. Phuah telah menaksir pampasan pada RM198 sekaki persegi yang berjumlah D RM32,713,577.32, manakala Basri telah menaksirkan pampasan pada kadar RM201.60 sekaki persegi yang berjumlah RM33,307,932.05. Walau bagaimanapun, kedua-dua pendapat adalah sama-sama kukuh dan dihormati. Kedua-dua pandangan telah menggunakan prinsip penilaian yang betul, memilih perbezaan yang ideal, melakukan E penyelarasan yang sewajarnya, dan telah mengambilkira faktor yang sama dalam membuat penyelarasan. Perbezaan mereka hanya berkenaan dengan peratusan yang diberikan kepada setiap faktor (lihat perenggan 9–10 & 13).

F (3) Ianya adalah satu prinsip yang kukuh yang mana kedua-dua penilai telah menggunakan prinsip yang betul dalam penilaian mereka, telah memilih perbandingan yang sama, telah mempertimbangkan faktor-faktor yang sama untuk tujuan penyelarasan, dan telah sampai kepada pendapat yang begitu hampir sesama mereka — oleh itu G mahkamah memilih untuk mengguna pakai penilaian berpihak kepada pemilik tanah. Ini selaras dengan maksud perkara 13 Perlembagaan Persekutuan. Dalam keadaan tersebut, mahkamah menerima pendapat Basri yang mewakili nilai yang lebih tinggi dan oleh itu berpihak kepada pemohon/pemilik tanah (lihat perenggan 14–15).

H (4) Dalam kes ini, oleh kerana jumlah yang dituntut oleh pemohon adalah jauh melebihi jumlah yang diawardkan oleh mahkamah, berdasarkan s 51 Akta tersebut, pemohon tidak berhak untuk kos. Pemohon juga diperintahkan untuk membayar pentadbir tanah 50% daripada kosnya. Pemohon juga diperintahkan untuk membayar Basri — penilai swasta I — yuran RM500 sehari (lihat perenggan 16 & 18).]

Notes

For cases on compensation, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1843–1875.

For cases on compulsory acquisition, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 2333–2334.
For cases on reference to court, see 8(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1979–1993.

Legislation referred to

Federal Constitution art 13
Land Acquisition Act 1960 ss 36, 40(2), 40D(2), (3), 51

Burhanudeen Abdul Wahid (Burhan & Co) for the applicants.
Mat Zaraai Alias (Senior Federal Counsel, Attorney General's Chambers) for the respondent.

Mohd Hishamudin J:

[1] This land reference to the High Court is made by the land administrator of Kuala Lumpur pursuant to s 36 of the Land Acquisition Act 1960 ('the Act'). This reference is made to the High Court because the landowners (the applicants in the present proceeding) are dissatisfied with the award made by the land administrator under the Act in respect of the acquisition of their land situated at Lots 176, 267 and 268, Section 72, Jalan Berhala, Brickfields, Kuala Lumpur. The award by the land administrator was RM193.61 per square foot, thus making a total award of RM31,987,351.45.

[2] The total area of the acquired land is 165,217.92 square feet. There were 109 squatters on the land.

[3] The landowners are of the view that the award is too low. They submit that the award should have been RM650 psf. They rely on the valuation of their valuer (private valuer), a valuation firm, Messrs KGV-Lambert Smith Hampton.

[4] The learned senior federal counsel, for the land administrator/respondent, on the other hand, contends that the award of the land administrator is fair and reasonable. He relied on the valuation report prepared by the government valuer.

[5] At the hearing before me I was assisted by two assessors in accordance with s 40A(2) of the Act which reads:

> (2) Where the objection before the Court is in regard to the amount of compensation, the Court shall appoint two assessors (one of whom shall be the valuation officer employed by the Government) for the purpose of aiding the Judge in determining the objection and arriving at a fair and reasonable amount of compensation.

[6] The two assessors (property valuers) that aided me in determining the compensation were:

(1) Encik Phuah Tick Lai, Director, Valuation Department, Pahang (the government valuer); and

(2) Encik Mohd Basri Rahmat, Director, HASB Consultants Sdn Bhd.

[7] In arriving at my decision, I am bound by the legal constraints imposed upon me by s 40D of the Act which provides:

40D Decision of the Court on compensation

(1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.

(2) Where the assessors have each arrived at a decision which differs from each other then the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor.

(3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

[8] In the present case, the assessors differ in their decisions. Encik Phuah was of the view that the compensation should be RM198 psf. His opinion can be found at encl 40. Based on Encik Phuah's valuation, the award should be RM32,713,577.32.

[9] Encik Basri, on the other hand, was of the opinion that the compensation should be RM201.60 psf. His opinion can be found at encl 41. Based on Encik Basri's valuation, the award should be RM33,307,932.05.

[10] It will be observed that their opinions on the value are quite close to one another. It is only RM3.60 apart (ie RM201.60–RM198).

[11] Under the law my decision would have to be within the constraints of sub-s (2) of s 40D.

[12] By reason of sub-s (2) of s 40D, my judicial discretion is limited: I am legally compelled to concur either with the decision of Encik Phuah or with the decision of Encik Basri. I am not at liberty to arrive at any other decision, even if I were to disagree with their opinions.

[13] And, if I may add, by virtue of sub-s (3) of s 40D, whatever decision that I make, pursuant to sub-s (2), is not appealable to a higher court. In other words, the decision is final.

[14] In the present case, I find both opinions apply the correct valuation principle (the comparative method), had chosen the ideal comparable, namely, Lot 26, had made the appropriate adjustments, and had taken into account similar factors in making the adjustments (location factor, size factor, time factor, development potential factor and squatters factor). Their differences are only on the percentage to be given for each of the factors, but even here the differences are small. In short, both opinions are equally sound and respectable.

[15] I had accepted the opinion of Encik Phuah (RM201.60). I so elected because this is the higher value and hence is favourable to the applicants/landowners. In my judgment it is a sound principle that where both valuers had applied the correct principle of valuation (the comparative method), had chosen the same comparable (Lot 26), had taken similar factors into account for the purpose of adjustment, had arrived at opinions very close to one another, the court should elect to adopt the valuation that favours the landowners. This is to my mind in consonance with the spirit of art 13 of the Federal Constitution. Article 13 states:

> 13 Rights to property
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> (1) No person shall be deprived of property save in accordance with law.
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> (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[16] In the present case, it clear that the amount claimed by the applicants/landowners is far in excess of the amount awarded to them by this court. Hence, invoking s 51 of the Act, I held that the applicants were not entitled to costs. In addition I ordered the applicants to pay to the land administrator 50% of the land administrator's costs. Section 51 of the Act provides:

> 15 Costs
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> (1) In any proceedings arising from an objection to the amount of an award, costs shall be borne in accordance with the following provisions:
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> (a) ...;
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> (b) where the amount of the Court award exceed the sum awarded by the Land Administrator, the costs shall ordinarily be paid by the Land Administrator, but if the Court is of the opinion that the claim of the

applicant was so excessive or that he was so negligent in putting his case before the Land Administrator that some deduction from his costs should be made, or that he should pay a part of the Land Administrator's costs, the Court may make such order as to costs as it may think fit.

[17] I awarded interest at the rate of 8% per annum from the date of possession to the date of full payment.

[18] I also made an order that the private valuer from the private sector, Encik Basri, be paid a fee of RM500 per day (per sitting), this fee to be paid by the applicants (landowners).

Order accordingly.

Reported by Andrew Christopher Simon